

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	Customer Number: 20277
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James H. MCLAUGHLIN	:	Confirmation Number: 1702
	:	
Application No.: 09/964,143	:	Group Art Unit: 1617
	:	
Filed: September 25, 2001	:	Examiner: WANG, Shengjun
	:	
For: EMOLLIENT SKIN CONDITIONING	:	
CREAM AND METHOD	:	

**SECOND SUPPLEMENTAL DECLARATION OF LAUREN TRAHAN
UNDER 37 C.F.R § 1.132**

I, Lauren Trahan, declare and say as follows:

1. This Declaration supplements my previous Supplemental Declaration of June 30, 2008 (Supplemental Declaration) and Declaration of December 28, 2007 (Declaration) or collectively referred to as the “Declarations.”
2. In the course of my attorneys preparing the Reply Brief in this application under appeal, I became aware of errors in each of my Declarations regarding the scope of the claims in the above-referenced patent application.
3. Specifically, paragraph 4 of my Declaration stated, “I developed and organized a test and test panel to evaluate and compare the products covered by the claims in the present application to the Barker products.”
4. Further, paragraph 2 of my Supplemental Declaration stated, “[t]he hand recovery products sold incorporate the following ingredients, which are within the scope of the claimed subject matter of the above-referenced patent application.”
5. Claim 44 required that “the weight ratio of emollient material to said monocarboxylic acid salt is in the range of 4:1 to 2.5:1,” but this limitation is not met by the listed ingredients of paragraph 6 of my Declaration and

paragraph 2 of my Supplemental Declaration. The ingredients listed would provide a weight ratio below the lower limit of 2.5:1 but above a weight ratio of 2.1:1.

6. I have now been advised that the product produced and sold in paragraph 4 of my Supplemental Declaration has had varying weight ratios of emollient oils to calcium stearate ranging from 2.63:1 to 2.1:1. Also, the weight per cent of maltodextrin varied within the claimed range in the products sold.
7. I have been advised that an Amendment was filed in the above-referenced patent application on April 3, 2009 to change the weight ratio of emollient material to the monocarboxylic acid salt to 4.1:1 to 2.1:1. Subject to this Amendment all other paragraphs of my Declarations are complete and accurate.
8. In preparing my Declaration, I inadvertently did not recognize that the products tested were outside of the weight ratio of claim 44.
9. In preparing my Supplemental Declaration, I inadvertently did not recognize that the sales of the product included products that were outside the weight ratio of claim 44 or that the products sold had ingredients that defined weight ratios of emollient oils and calcium stearate ranging from 2.63:1 to 2.1:1, and had varying amounts of maltodextrin within the claimed range, due to the varying ingredients used to make the product.
10. In submitting my Declaration, it was my intent to test products having ingredients that were within the scope of the claims. Further, in submitting my Supplemental Declaration, it was my intent to establish sales of products having identified ingredients within the scope of the claims.
11. I only became aware of my error through discussions with my attorney in the preparation of a Reply Brief for the appeal in this application.
12. In particular, I understand that for the Reply Brief a claim chart of claim 44 was being prepared that compared all elements of the claims to the listed ingredients set forth in my Declarations. This was being done in order to further establish the nexus of invention to the considerations set forth in my Declarations.

13. The error was determined when it was found that the express weight ratio of ingredients was outside of the claim scope. Further, in reviewing the listed ingredients, it was found out that the products sold had a range of weight ratios, as is identified above in paragraph 6.
14. I understand that the attorneys have filed a Request for Continued Examination ("RCE") and an Amendment amending the claimed weight ratio of claim 44 to be 4.1:1 to 2.1:1.
15. To correct this error, I am submitting this 2d Supplemental Declaration, which, with the above amendment to claim 44, will accurately reflect the fact that the tested product of my Declaration and the sold products of my Supplemental Declaration are within the scope of the claims.

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I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that willful false statements or the like may jeopardize the validity of the application or any patent issuing thereon.

 4/6/2009
Lauren Trahan Date